

**Exhibit 12 to Statement of Undisputed Facts Filed in Support of Motion of American
Beryllia, Inc. For Summary Judgment**

KOLANZ DEPOSITION EXCERPTS

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 SUZANNE GENEREUX and BARRY *

4 GENEREUX, wife and husband, *

5 individually and as parents *

6 and natural guardians of *

7 their minor children, *

8 ANGELA GENEREUX and KRISTA *

9 GENEREUX, *

10 Plaintiffs * Case No.

11 vs. * 04CV12137JLT

12 AMERICAN BERYLLIA CORP., *

13 BRUSH WELLMAN, INC., BRUSH *

14 WELLMAN CERAMICS, INC., *

15 BRUSH WELLMAN CERAMIC *

16 PRODUCTS, INC., HARDRIC *

17 LABORATORIES, INC., KYOCERA *

18 AMERICA, INC., KYOCERA *

19 INDUSTRIAL CERAMICS CORP. *

20 and RAYTHEON COMPANY, *

21 Defendants *

22 VIDEOTAPED DEPOSITION OF

23 MARC EDWARD KOLANZ

24 June 6, 2006

Page 138

1 aware that Exhibit One would not necessarily
 2 stay with this product so that its end user
 3 would see it; correct?
 4 A. I don't know that to be the case.
 5 Q. Now, the product warning label that was
 6 used by Brush on its beryllium ceramics sold to
 7 Raytheon in the 1980s, did that change over
 8 time?
 9 A. Yes. It has changed over time based on
 10 our knowledge and on advice of the warnings
 11 experts over the years.
 12 Q. You had told me earlier, Mr. Kolanz,
 13 that prior to 1985, you couldn't tell me with
 14 any degree of certainty whether the MSDS sheets
 15 that were used for beryllium ceramic necessarily
 16 accompanied the sale of such ceramics to
 17 Raytheon before 1985; is that correct?
 18 ATTORNEY FAXON:
 19 Object to form,
 20 mischaracterized his testimony.
 21 A. You said that the MSDS would accompany
 22 the part?
 23 BY ATTORNEY HONIK:
 24 Q. You couldn't tell me, could you,

Page 139

1 whether Brush sent MSDS sheets with each and
 2 every beryllium ceramic part that it sold to
 3 Raytheon prior to 1985; can you?
 4 A. No, I can't tell you that, and I don't
 5 think you asked me that specific question
 6 earlier.
 7 Q. Well, I have now, and the answer is you
 8 can't tell me; can you?
 9 A. Right. What we did include is warning
 10 --- our warning labels on each and every package
 11 that was sent.
 12 Q. How do you know that?
 13 A. Because that has been the practice
 14 within Brush Wellman for ---since the '50s, the
 15 early '50s. And that's something that I would,
 16 at times, check on myself, to make sure that
 17 people were following that direction, making
 18 sure they're using the right labels and such.
 19 Q. What would you do to satisfy yourself
 20 that those warning labels accompanies the
 21 products containing BeO that were sold to
 22 Raytheon's Waltham facility prior to 1985?
 23 A. Typically, when I would visit a
 24 facility or area, I would make it a practice on

Page 140

1 occasion, to check into the shipping department
 2 and make sure they have the proper labels in
 3 place, they had the current labels, and that
 4 upon inquiry of people there, that they were
 5 being used.
 6 Q. Do you know what the label that was in
 7 use prior to 1985 on beryllium ceramic looked
 8 like?
 9 A. I have some idea of it, but it would be
 10 hard to describe it without a copy of it here.
 11 Q. Well, did you look at it prior to
 12 coming here today?
 13 A. The pre-'85 label?
 14 Q. Yes.
 15 A. At some point in the past I've looked
 16 at it, not recently.
 17 ATTORNEY HONIK:
 18 May we have this marked as Two?
 19 (Kolanz Exhibit Two marked for identification.)
 20 BY ATTORNEY HONIK:
 21 Q. Mr. Kolanz, this document now marked
 22 Two, do you recognize it?
 23 A. I recognize it as one of Brush
 24 Wellman's product warning labels.

Page 141

1 Q. Okay. And when was this product
 2 warning label in use by Brush?
 3 A. I'm not specifically sure when this
 4 version of the label was put into use by Brush.
 5 I'd have to go back and check and compare as to
 6 when that might have been to be able to
 7 determine when this version was put into use.
 8 Q. Was it ever the case that you would put
 9 the revision or revised date on the labels
 10 themselves so that one could know when the label
 11 came into use?
 12 A. I don't recall that we ever did that,
 13 because we usually made a big deal out of making
 14 sure we captured back all the old labels and got
 15 facilities to get rid of those labels, and then
 16 gave them the new labels. So I'd have to look -
 17 --. I don't recall us putting a date on the
 18 warning labels.
 19 Q. Well, looking at Kolanz Two and the
 20 language that's reflected there, can you tell me
 21 whether or not the language employed in this
 22 label was identical or similar in any respect to
 23 the one you used prior to 1985?
 24 A. I don't specifically recall. I'd have

Page 314

1 they said.

2 VIDEOGRAPHER:

3 5:35 p.m., off record.

4 OFF VIDEO

5 SHORT BREAK TAKEN

6 ON VIDEO

7 VIDEOGRAPHER:

8 5:37 p.m., back on record.

9 BY ATTORNEY FAXON:

10 Q. Mr. Kolan, you were asked some

11 questions today about CBD, both today and in the

12 1980s. How, if at all, have the diagnostic

13 criteria for chronic beryllium disease changed

14 since the 1980s?

15 ATTORNEY HONIK:

16 Objection, calls for an expert

17 opinion this witness is incompetent to give.

18 A. The difference in diagnostic criteria

19 started to change in about 1989 as part of a

20 study conducted by K. Kreiss, where she proposed

21 the concept of a subclinical form of CBD. Prior

22 to that time, CBD was defined mostly upon

23 persons who were experiencing clinical symptoms

24 of a health effect, which could include cough

Page 315

1 and loss of weight, and could be discernable

2 changes in

3 x-ray, or pulmonary function changes along with

4 a confirmed exposure to beryllium.

5 After the years subsequent to '89, the

6 criteria for defining chronic beryllium disease

7 and the creation of, kind of the term

8 subclinical disease, started including --- or

9 included persons who would be found to have

10 granuloma in their lung. And actually, it's ---

11 well, it's a type of granuloma in the lung that

12 would be found upon biopsy along with a finding

13 of beryllium sensitized based on either a blood

14 test or a lung fluid test.

15 BY ATTORNEY FAXON:

16 Q. How, if at all, have the change in

17 diagnostic criteria that you've just described

18 affected the rate of instance of chronic

19 beryllium disease that you have seen in Brush

20 Wellman's plants?

21 ATTORNEY HONIK:

22 Object to the form of the

23 question and to the extent that this calls for

24 an opinion outside of this witness' competency.

Page 316

1

2 A. In general, using the new diagnostic

3 criteria, the prevalence of CBD has gone up

4 sharply when you go to include subclinical cases

5 of chronic beryllium disease.

6 BY ATTORNEY FAXON:

7 Q. Are statements about the incidence of

8 chronic beryllium disease from the 1980s then

9 comparable to statements about the incidence of

10 chronic beryllium disease today?

11 ATTORNEY HONIK:

12 Same objection.

13 A. Not typically, because most of the

14 studies in the '80s would be only looking at

15 clinical chronic beryllium disease, where the

16 vast majority of the studies in the 1990s and

17 beyond include subclinical CBD, oftentimes not

18 even describe the subclinical CBD in with any

19 clinical cases of CBD.

20 BY ATTORNEY FAXON:

21 Q. Mr. Kolan, earlier today, you

22 described Raytheon as sophisticated. Why did

23 you describe Raytheon as sophisticated?

24 A. That was based primarily on looking at

Page 317

1 the types of documents they were producing,

2 which indicated some real expertise in health

3 and safety, and the procedures that they had

4 created for beryllium, in addition to their ---

5 even their use of that little caution label, to

6 me, was well above and beyond the typical

7 company. And they were an aerospace company,

8 which aerospace companies tended to be moreso

9 leaders in health and safety practices and

10 procedures overall. They were oftentimes very

11 much like some other high-end, very

12 sophisticated health and safety groups.

13 Q. When you were dealing with Raytheon in

14 the 1980s, did you develop a belief as to

15 whether or not they were sophisticated?

16 A. Yes, I believe I had some reason to

17 believe they were sophisticated then, simply

18 because they had industrial hygienists on staff,

19 plus I was getting questions from people that

20 were, like, engineers that worked for Raytheon,

21 and that isn't always typical to get it from

22 actually kind of production-related personnel.

23 So that shows to me a greater understanding of

24 health and safety by non-health and safety

<p style="text-align: right;">Page 318</p> <p>1 personnel at the Raytheon company. 2 Q. Did you form a belief in the 1980s as 3 to whether or not Raytheon was likely to pass 4 industrial hygiene information about beryllium 5 or health and safety information about beryllium 6 on to its production workers? 7 ATTORNEY HONIK: 8 Object to form. 9 A. Well, I would certainly expect, with 10 the type of company it appeared to be, that 11 training --- and plus it is required by Hazard 12 Communication Standard that they pass on 13 information, so I certainly would have expected 14 them to have done that and passed it on to 15 employees. And I believe there were some --- 16 records of some kind of beryllium training, but 17 I don't remember the time frame in which those 18 were conducted. 19 BY ATTORNEY FAXON: 20 Q. Mr. Kolanz, Mr. Honik asked you a 21 number of questions that were essentially, why 22 didn't you put X or why didn't you put Y on the 23 product beryllium warning label. Why didn't you 24 put the statements that Mr. Honik asked you</p>	<p style="text-align: right;">Page 320</p> <p>1 in the 1980s warn of inhalation of beryllium 2 particulate? 3 A. I believe they did. 4 Q. You were asked some questions about 5 Exhibit Eight, if you have that before you, sir. 6 I believe you have it right in front of you, 7 sir. 8 A. Oh. 9 Q. Does that document deal with beryllium 10 oxide? 11 A. No. This document refers to beryllium 12 metal. 13 Q. You were asked some questions about 14 Exhibits Kolanz 15 and Kolanz 17, two letters 15 from 1989. In the course of your 16 responsibilities at Brush, did you review those 17 letters at or about the time that they were sent 18 to customers? 19 A. Did I review these letters? 20 Q. Yes. 21 A. I actually don't recall if I did or did 22 not review these. It would not be unusual for 23 me to not have reviewed something like that 24 during that time frame.</p>
<p style="text-align: right;">Page 319</p> <p>1 about on the beryllium warning label? 2 ATTORNEY HONIK: 3 Object to the form of the 4 question. 5 A. The types of specifics that Mr. Honik 6 had mentioned are something that ---. A warning 7 label is designed to be a primary means of 8 giving warning to the recipient of the label. 9 And we were advised by our warning experts that 10 you shouldn't be including a lot of specifics in 11 there, and you had to try to provide a means for 12 getting those specifics in another venue. So 13 you stick to the very primary warnings so the 14 initial recipient of the label understands the 15 basic message, and it isn't confused by other 16 information that's provided. 17 BY ATTORNEY FAXON: 18 Q. And what is the primary hazard 19 associated with beryllium oxide? 20 A. The primary hazard would be the 21 inhalation of beryllium oxide particulate, 22 having the potential to cause serious chronic 23 lung disease. 24 Q. Did Brush's warning labels to Raytheon</p>	<p style="text-align: right;">Page 321</p> <p>1 Q. Did you have an opportunity to review 2 them today at the deposition? 3 A. Yes. 4 Q. Were there any statements in either of 5 the two letters that you felt were inaccurate as 6 of 1989? 7 A. No. I don't think there's anything in 8 here that was really inaccurate. I might choose 9 to word them differently, but I'm not sure how I 10 might have chosen to word them differently in 11 1989 versus today. 12 Q. Mr. Kolanz, finally, you used the 13 phrase evaluation sales in connection with two 14 entries on what has been marked as Exhibit 20, 15 the sales spreadsheet. Can you describe for the 16 jury what you mean by evaluation sales? 17 A. Well, evaluation sales are samples, or 18 samples of parts that would be provided to the 19 customer in an attempt, as I see it, to win the 20 business to try to sell to the customer those 21 parts. 22 Q. And with respect to those parts that 23 were sold as evaluation sales, I believe you 24 described them as something on the order of</p>

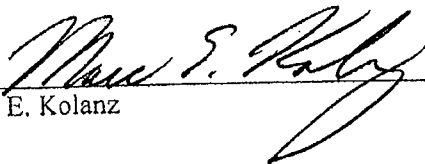
Pg./Line	Change	Reason
16:2	"them" to "the . . ."	transcription error
22:2	Youngblot to Youngblut	spelling error
39:1	Freemont to Fremont	spelling error
40:7	add "what" "understand <u>what</u> it"	transcription error
41:15	add "beginning in 1984," so that the answer reads "Sell beryllium oxide to Raytheon <u>beginning in 1984.</u> "	more precise answer
49:13-17	Change to "Yes. Brush's records indicate MSDS were sent before HAZCOM went into effect."	correct answer
52:6	Teresa Helman to Theresa Haumann	spelling error
56:19	"on a" to "zone"	transcription error
59:2-4	change to "The ceramic study was sent to Raytheon."	correct answer, as reflected in later testimony
62:18	"there's" to "there are"	grammar
71:4	"here" should be "there"	grammar/transcription
73:5-6	change "what they did with these parts, I don't know" – "we didn't have access to see what processes were being performed"	more precise response
88-89	Newbery Port to Newburyport	spelling
93:22	"white" to "while"	transcription error
94:22	"filmmaking" to "pillmaking"	transcription error
103:14	Add to end of answer "As I understand that term was used to describe the products Mrs. Genereux worked with – no."	Clarify answer depending on counsel's intended use of the word "window."

Pg./Line	Change	Reason
106:21-23	Add to end of answer "As I understand that term was used to describe the products Mrs. Genereux worked with – no."	Clarify answer depending on counsel's intended use of the word "window."
109:12	Change to "I don't know."	Reviewed many drawing and sales records, but don't know whether they were exhibits or not.
109:15	Change to "I don't know."	Reviewed many drawing and sales records, but don't know whether they were exhibits or not.
117	Add at end "As I understand that term was used to describe the products Mrs. Genereux worked with – no."	Clarify answer depending on counsel's intended use of the term "window."
117:18-21	Add at end, "There were evaluation samples which were apparently tested as windows on microwave tubes, but the records indicate that Raytheon rejected those parts and returned them, and that they were never sold in production quantities."	Clarify answer consistent with testimony later in my deposition.
118:2	Change to "Not with respect to the sheet. I did review sales documents and speak to current and former Brush employees."	correct answer
118:24	Change "Over the break" to "Before the break"	transcription error or mistake
120:17-20	Insert "whole." "I didn't read the <u>whole</u> deposition."	As the rest of the answer reflects, I did review parts of it.
122:11-16	"Sales documents indicate that small quantities of three inch disks and one-and-a-half inch disks were sent as evaluation samples to Raytheon. These evaluation samples failed to pass inspections by Raytheon and were generally	clarify and correct answer

Pg./Line	Change	Reason
	returned. They were never sold in production quantities."	
122:21-24	Change "the one woman" to "Clare Balient" and add at end "but the parts she was describing were not sold by Brush Wellman."	
123:7	Add "it," "putting <u>it</u> in there"	add word, grammar/transcription
127:2	Change "Well" to "We"	transcription/grammar error
133:3	Add "an" - "was <u>an</u> "	transcription/grammar error
158:7	"compliant" to "compliance"	transcription error
168:17	"bedding" to "vetting"	transcription error
170:15	Add "I was aware of Shima's papers but concluded that the information was not credible" after "Yes."	Clarify question that I was answering.
182:18	delete "thus"	extra word
182:24	Add "for subclinical disease" after "Yes."	clarify answer
210:5	Add "that's when we learned of and relayed the results of Kriess's study" after "Yes."	Clarify question was answering.
226:2	Add "1985 document" after "this"	Clarify what document is being discussed.
245:13	Add "in production quantities. I did see a memo that described evaluation samples that were returned after testing by Raytheon when Brush was attempting to qualify as a supplier."	clarify answer
250:19	"pool" to "pull"	transcription error
255:17	Delete "and its use"	transcription/grammar error

Pg./Line	Change	Reason
286:9	"I" to "It"	transcription error

The foregoing reflect my changes and corrections to my deposition in *Genereux, et al. v. America Beryllia Corp., et al.*



Marc E. Kolanz